IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2474 OF 2005

IN

SUMMARY SUIT NO.681 OF 2003

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Esmail Ebrahim Dhariwal and anr. ...Plaintiffs

v/s.

Som Distelleries and Breweries
and anr. ...Defendants

...

Mr.Sanjay Jain i/b Mr. Lalit Jain for the Plaintiffs.
Mr.Milind Vasudeo i/b Mr. Rajesh Ravindran for the Defendants.

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**CORAM: D.K.DESHMUKH, J.**

**DATED:** 20TH APRIL,2007

**P.C.:**

By consent of parties, Notice of Motion is disposed of in following terms:

(a) Exparte decree passed in Summary Suit No.681 of 2003 is set aside and the Defendants are granted leave to defend the suit. Defendants to file their written statement within a period of eight weeks from today, subject to following conditions:

(i) The amount of Rs.1,00,00,000/- (Rupees One crore only), which the Defendants have deposited in this court pursuant to the order passed by the Appellate court in Appeal No.949 of 2005 may be permitted to be withdrawn by the Plaintiffs on furnishing a bank guarantee of a nationalised bank. Withdrawal be permitted within a period of 10 weeks from today. If the amount is not withdrawn within the aforesaid period, the amount shall be invested in fixed deposit in any nationalised bank during the pendency of the suit.

(ii) The Plaintiffs shall also be permitted to withdraw the amount of Rs.30,00,000/- (Rupees Thirty Lakh only) which the Defendants have deposited in Writ Petition No.107 of 2005 to Writ Petition No.113 of 2005, which are pending at the Appellate Side of this Court. This withdrawl is permitted without prejudice to the rights and contentions of both sides and on an undertaking to be furnished by the Plaintiffs to the court where writ petitions are pending, undertaking therein to bring back the amount if so directed by that court or by this court and on such terms and conditions as may be directed by this court. It is also agreed between the parties that interim order which is presently operating in those writ petitions shall continue to operate till the disposal of those writ petitions.

(iii) The Defendants shall deposit the amount of Rs.61,00,000/- (Rupees Sixtyone Lakh only) within a period of four months from today with due intimation to the Plaintiffs. The Prothonotary & Sr.Master shall permit the Plaintiffs to withdraw the amount on furnishing the bank guarantee of a nationalised bank. If the amount is not withdrawn within ten weeks of deposit, the amount shall be invested by the

Prothonotary & Sr.Master in fixed deposit in any nationalised bank during the pendency of the suit.

(iv) Apart from furnishing the bank guarantee for withdrawal of amount of Rs. 1,00,00,000/- and an amount of Rs.61,00,000/-, the Plaintiffs shall also file an undertaking in this court undertaking to bring back the amount, if so directed by this court and on such terms and conditions as may be directed by this court, and in that event the rate of interest shall not be less than 12% p.a.

(v) In case the Defendants fail to deposit the amount of Rs.61,00,000/- within the period mentioned above, this Notice of Motion shall be treated as rejected and in that event the Plaintiffs shall be at liberty to execute the decree.

(vi) It is agreed between the parties that the flat belonging to the Defendants situated in Bombay is presently under attachment in execution proceedings. As now the decree is set aside, the attachment may come to an end, but by consent of parties it is directed that the attachment of the flat will continue for a period of six months from today.

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